

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

FUSION ELITE ALL STARS, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.,

Defendants.

Case No. 2:20-cv-02600-SH-cgc

Judge Sheryl H. Lipman

Magistrate Judge Charmiane G. Claxton

**Jury Trial Demanded**

**PLAINTIFFS' AND DEFENDANTS'  
JOINT MOTION FOR AN ORDER SETTING A BRIEFING SCHEDULE**

Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, and Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center, Kathryn Anne Radek, Lauren Hayes, and Janine Cherasaro (“Plaintiffs”) together with Defendants Varsity Brands, LCC, Varsity Spirit, LLC, Varsity Spirit Fashion & Supplies, LLC, and U.S. All Star Federation, Inc. (“Defendants”) (together with Plaintiffs, “the Parties”) respectfully submit this joint motion for an order setting a briefing schedule as it relates to Defendants’ motion to strike certain allegations in Plaintiffs’ operative complaint, D.E. #82 (“Motion to Strike”).

By way of background, on October 15, 2020, the Court entered a Scheduling Order setting the briefing schedule for Defendants’ Motions to Dismiss. *See* D.E. #61 at 1-2. In conjunction with their Motions to Dismiss Defendants have also filed a Motion to Strike. Given the Motion to Strike and the Motions to Dismiss both address allegations in Plaintiffs’ Complaint, the Parties respectfully request the Court set the same briefing schedule for the Motion to Strike as is currently applicable to the Motions to Dismiss. Accordingly, the Parties propose the following briefing schedule:

**Opposition to Motion to Strike:** January 15, 2021;

**Replies in Support of Motion to Strike:** February 15, 2021.

A proposed order will be submitted with this Motion in accordance with the Local Rules.

Dated: December 2, 2020

Respectfully submitted,

By: s/ Benjamin A. Gastel  
J. Gerard Stranch, IV (TN BPR #23045)  
Benjamin A. Gastel (TN BPR #28699)  
**BRANDSTETTER, STRANCH &  
JENNINGS, PLLC**  
223 Rosa Parks Ave. Suite 200  
Nashville, TN 37203  
Telephone: (615) 254-8801  
gerards@bsjfirm.com  
bng@bsjfirm.com

*Liaison Counsel for the Plaintiffs and the  
Proposed Direct Purchaser Class*

H. Laddie Montague, Jr.\*  
Eric L. Cramer\*  
Mark R. Suter\*  
**BERGER MONTAGUE PC**  
1818 Market Street, Suite 3600  
Philadelphia, PA 19106  
Telephone: (215) 875-3000  
hlmontague@bm.net  
ecramer@bm.net  
msuter@bm.net

Jonathan W. Cuneo\*  
Katherine Van Dyck\*  
Victoria Sims\*  
**CUNEO GILBERT & LADUCA, LLP**  
4725 Wisconsin Avenue NW, Suite 200  
Washington, DC 20016  
Telephone: (202) 789-3960  
jonc@cuneolaw.com  
kvandyc@cuneolaw.com  
vicky@cuneolaw.com

Gregory S. Asciolla\*  
Karin E. Garvey\*  
Veronica Bosco\*  
Ethan H. Kaminsky\*  
**LABATON SUCHAROWLLP**  
140 Broadway  
New York, NY 10005  
Telephone: (212) 907-0700  
gasciolla@labaton.com  
kgarvey@labaton.com  
vbosco@labaton.com  
ekaminsky@labaton.com

*Interim Co-Lead Counsel for the Proposed  
Direct Purchaser Class*

Benjamin D. Elga\*\*\*  
**JUSTICE CATALYST LAW, INC.**  
81 Prospect Street  
Brooklyn, NY 11201  
Telephone: (518) 732-6703  
belga@justicecatalyst.org

Brian Shearer\*\*\*  
Craig L. Briskin\*  
**JUSTICE CATALYST LAW, INC.**  
718 7th Street NW Washington, DC 20001  
Telephone: (518) 732-6703  
brianshearer@justicecatalyst.org  
cbriskin@justicecatalyst.org

Roberta D. Liebenberg\*  
Jeffrey S. Istvan\*  
Mary L. Russell\*  
**FINE KAPLAN AND BLACK, R.P.C.**  
One South Broad St., 23rd Floor Philadelphia,  
PA 19107  
Telephone: (215) 567-6565  
rliebenberg@finekaplan.com  
jistvan@finekaplan.com  
mrussell@finekaplan.com

Nathan A. Bicks (TN BPR #10903)  
Frank B. Thacher III (TN BPR #23925)  
**BURCH, PORTER, & JOHNSON, PLLC**  
130 North Court Ave. Memphis, TN 38103

Telephone: (901) 524-5000  
nbicks@bpjlaw.com  
fthacher@bpjlaw.com

Aubrey B. Harwell, Jr. (TN BPR #002559)  
Charles Barrett (TN BPR #020627)  
Aubrey B. Harwell III (TN BPR #017394)  
**NEAL & HARWELL, PLC**  
1201 Demonbreun St., Suite 1000  
Nashville, TN 37203  
Telephone: (615) 244-1713  
aharwell@nealharwell.com  
cbarrett@nealharwell.com  
tharwell@nealharwell.com

*Additional Attorneys for the Proposed Direct  
Purchaser Class*

\* Admitted *pro hac vice*  
\*\* *Pro hac vice* application pending  
\*\*\* *Pro hac vice* application forthcoming

By: /s Matthew S. Mulqueen

George S. Cary\*

Steven J. Kaiser\*

Alexis Collins\*

Mark W. Nelson\*

**CLEARY GOTTLIEB STEEN &  
HAMILTON LLP**

2112 Pennsylvania Ave., NW

Washington, DC 20037

Tel: (202) 974-1500

gcary@cgsh.com

skaiser@cgsh.com

alcollins@cgsh.com

mnelson@cgsh.com

\* Admitted *pro hac vice*

Adam S. Baldridge (TN #23488)

Matthew S. Mulqueen (TN #28418)

**BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC**

165 Madison Ave., Suite 2000

Memphis, TN 38103

Tel: (901) 577-8166

abaldridge@bakerdonelson.com

mmulqueen@bakerdonelson.com

*Attorneys for Defendants Varsity Brands,  
LLC, Varsity Spirit, LLC, and Varsity Spirit  
Fashion & Supplies, LLC*

By: /s Nicole D. Berkowitz

Grady Garrison (TN #008097)

Nicole D. Berkowitz (TN #35046)

**BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC**

165 Madison Ave., Suite 2000

Memphis, TN 38103

Tel: (901) 577-8166

ggarrison@bakerdonelson.com

nberkowitz@bakerdonelson.com

*Attorneys for US. All Star Federation, Inc*

**CERTIFICATE OF SERVICE**

The undersigned certifies the foregoing document was filed with the Court's Case Management/Electronic Case Filing System, this 2<sup>nd</sup> day of December, 2020, and served upon the following counsel:

George S. Cary  
Steven J. Kaiser  
Alexis Collins  
Mark W Nelson  
**CLEARY GOTTlieb STEEN & HAMILTON LLP**  
2112 Pennsylvania Ave., NW  
Washington, DC 20037  
Tel: (202) 974-1500  
gcary@cgsh.com  
skaiser@cgsh.com  
alcollins@cgsh.com  
mnelson@cgsh.com

Grady Garrison  
Nicole D. Berkowitz  
Adam S. Baldridge  
Matthew Sinon Mulqueen  
**BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC**  
165 Madison Ave., Suite 2000  
Memphis, TN 38103  
Tel: (901) 577-8166  
ggarrison@bakerdonelson.com  
nberkowitz@bakerdonelson.com  
abaldridge@bakerdonelson.com  
mmulqueen@bakerdonelson.com

s/ Benjamin A. Gastel  
Benjamin A. Gastel (TN BPR #28699)